



March 27, 2018

SUBMITTED ELECTRONICALLY

Freedom of Information Officer
U.S. Environmental Protection Agency, Region VIII
999 18th Street, Suite 500
Denver, CO 80202-2466

Re: Freedom of Information Act Request for Records Concerning Emission Guidelines for Landfills

Dear Freedom of Information Officer:

Environmental Defense Fund (“EDF”) respectfully requests records, as that term is described at 5 U.S.C. § 552(f)(2) of the Freedom of Information Act (“FOIA”), of the U.S. Environmental Protection Agency (“EPA” or the “Agency”).

As used in this request, “Emission Guidelines” means Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 81 Fed. Reg. 59,276 (Aug. 29, 2016).

Specifically, EDF requests:

1. All state plans to implement the Emission Guidelines that states submitted to EPA; and
2. All correspondence between EPA and states relating to plans to implement the Emission Guidelines, including correspondence relating to:
 - general requirements (including deadlines) for state plans,
 - any particular state plan or plans, regardless of whether such plan or plans were ultimately submitted to EPA,
 - any federal plan or possibility of a federal plan.

For item (1), EDF seeks records produced, modified, or transmitted since August 29, 2016. For item (2), EDF seeks records produced, modified, or transmitted since January 20, 2017. For both items, EDF seeks records through the date that EPA begins searching for records responsive to this request.

By this request, EDF seeks only those records in the possession or control of EPA Region VIII.

EDF respectfully requests that EPA produce any responsive records as they become available, without waiting until all responsive records are ready for production.

If any of the information sought in this request is deemed by EPA to be properly withheld under a FOIA exemption, 5 U.S.C. § 552(b), please provide EDF with an explanation, for each such record or portion thereof, sufficient to identify the record and the particular exemption(s) claimed.

Request for Expedited Processing

EDF respectfully seeks expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 40 C.F.R. § 2.104(e)(1)(ii), which applies when there is “[a]n urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.” With respect to five other FOIA requests, EPA recently recognized EDF’s eligibility for expedited processing on this basis.¹ In support of this request for expedited processing, I certify that the following information is true and correct to the best of my knowledge and belief:

- (1) EDF engages in extensive, daily efforts to inform the public about matters involving environmental policy. For example, EDF has multiple channels for distributing information to the public, including through direct communication with its more than 2 million members, press releases, blog posts, active engagement on social media, and frequent appearances by staff in major media outlets.²
- (2) EDF has the expertise to disseminate these records in a rigorous and accessible manner. We have long been actively involved in regulation of air pollution from landfills. The NSPS arose from a lawsuit that EDF filed against EPA in 2011, which resulted in a 2012 consent decree.³ The Emission Guidelines resulted in part from EPA’s “data collection efforts” for the NSPS.⁴ EDF also submitted comments on proposals for both the NSPS and Emission Guidelines,⁵ as well as a white paper containing expert analysis relevant to the NSPS and Emission Guidelines.⁶

¹ See Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ2017-003545 (Feb. 23, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-005587 (Apr. 12, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-008622 (July 7, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-009283 (July 13, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-009579 (July 26, 2017).

² See, e.g., Press Release, EDF, EPA Delays Efforts to Reduce Methane Pollution from Landfills (May 23, 2017), <https://www.edf.org/media/epa-delays-efforts-reduce-methane-pollution-landfills>.

³ See Consent Decree, *EDF v. Jackson*, No. 1:11-cv-04492 (S.D.N.Y. Oct. 1, 2012).

⁴ Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, Advanced Notice of Proposed Rulemaking, 79 Fed. Reg. 41,772, 41,775 (July 17, 2014).

⁵ See Comments of Peter Zalzal & Tomás Carbonell, Docket Nos. EPA-HQ-OAR-2003-0215 & EPA-HQ-OAR-2014-0451 (Sept. 15, 2014); Comments of Peter Zalzal et al., Docket Nos. EPA-HQ-OAR-2003-0215 & EPA-HQ-OAR-2014-0451 (Oct. 26, 2015).

⁶ EDF, Recommendations and Considerations for EPA’s Forthcoming Revisions to Section 111 Standards for MSW Landfills (Jan. 2, 2013), Docket No. EPA-HQ-OAR-2014-0451.

- (3) On August 29, 2016, EPA published the Emission Guidelines.⁷ The rule established May 30, 2017 as the deadline for state plans,⁸ after which EPA would have four months to approve or disapprove such plans.⁹ Thus, the latest possible deadline for EPA action on any timely submitted state plan would be September 30, 2017.
- (4) If any state failed to submit a state plan, EPA would be required to promulgate a federal plan for such state within six months of the state plan submission deadline,¹⁰ or by November 30, 2017.
- (5) On May 22, 2017, the Administrator signed a 90-day administrative stay of the Emission Guidelines. This stay was published in the Federal Register on May 31¹¹ and expired on August 29.
- (6) On May 26, 2017, EPA submitted for review to the White House Office of Management and Budget a “Stay of Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills” and “Extension of Stay of Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills.”¹²
- (7) In late October 2017, an EPA spokesperson informed Waste Dive that states would not be subject to any sanction for failure to submit a state plan, that the Agency was not “prioritiz[ing] the review of” any submitted state plans, and that the Agency was not working on a federal plan.¹³
- (8) On January 11, 2018, EPA withdrew both the “Stay” and “Extension of Stay” from the Office of Management and Budget.¹⁴
- (9) In a court filing on January 22, 2018, EPA stated that the May 31 administrative stay had not altered any of the deadlines described above.¹⁵ EPA further stated that it had “neither approved nor disapproved the state plans that were timely submitted, nor ha[d] EPA promulgated any federal plans.”¹⁶
- (10) To the best of my knowledge, there exists very little public information about state plans to implement the Emission Guidelines that were submitted by states in this

⁷ 81 Fed. Reg. 59,276 (Aug. 29, 2016).

⁸ *See id.* at 59,286.

⁹ *See id.* at 59,286-87; 40 C.F.R. § 60.27(b).

¹⁰ 40 C.F.R. § 60.27(c)-(d).

¹¹ Stay of Standards of Performance for Municipal Solid Waste Landfills and Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 82 Fed. Reg. 24,878 (May 31, 2017).

¹² *See* Office of Info. & Regulatory Affairs, Regulation Identifier Nos. 2060-AT64, 2060-AT60.

¹³ Cody Boteler, *EPA Offers Public Clarification on Timeline for NSPS, EG Landfill Rules Months after Stay Expires*, Waste Dive (Oct. 31, 2017), <https://www.wastedive.com/news/epa-offers-public-clarification-on-timeline-for-nsps-eg-landfill-rules-mon/508484/>.

¹⁴ *See* Office of Info. & Regulatory Affairs, *supra* note 12.

¹⁵ *See* Resps. Initial Br. 35-36, *Nat. Res. Def. Council v. EPA*, No. 17-1157 (D.C. Cir. Jan. 22, 2018), ECF No. 1714147.

¹⁶ *Id.* at 49.

Region. Even though EPA acknowledged that deadlines for both state and federal plans “have come and gone,”¹⁷ the public does not know which states submitted plans or the contents of any plans submitted. Nor does the public know whether regional officials have engaged in any correspondence with states about implementing the Emission Guidelines through either state or federal plans.

- (11) Once fully implemented, the Emission Guidelines will result in reductions of multiple harmful pollutants, including methane, volatile organic compounds (and resulting particulate matter and ozone), and hazardous air pollutants including benzene, ethylbenzene, toluene, vinyl chloride, and other air toxics. These reductions will result in benefits for the climate and human health, including fewer asthma attacks and decreased incidence of cancer.¹⁸
- (12) The Emission Guidelines—and EPA’s plans for implementing them—have attracted considerable public interest.¹⁹ However, EPA’s actions and statements have created significant uncertainty about the Agency’s plans for implementing the Emission Guidelines. Expedient production of the requested records would provide the public with a concrete indication of what actions the Agency has taken with respect to the Emission Guidelines—and whether the rule’s crucial public benefits are on track to be achieved.

Request for Fee Waiver

As a non-partisan, non-profit organization that provides information that is in the public interest, EDF respectfully requests a waiver of fees associated with this request. We are not seeking information for any commercial purpose and the records received will contribute to a greater public understanding of issues of considerable public interest: emissions of dangerous and hazardous pollutants from our nation’s solid municipal waste landfills. 5 U.S.C. § 552(a)(4)(A)(iii). EDF is well positioned to disseminate the records to the public, as we routinely issue press releases, action alerts, reports, analyses, and other public outreach materials. We also have considerable expertise in this area, having filed the lawsuit that gave rise to the NSPS and Emission Guidelines and submitted administrative comments and expert analysis into the rulemaking dockets. We are well-qualified to present the records to the public in a manner that clearly conveys their value, and we fully intend to disseminate newsworthy information received in response to this request. Accordingly, we respectfully request that the documents be furnished without charge.

¹⁷ *Id.* at 36.

¹⁸ See EPA, Regulatory Impact Analysis for the Final Revisions to the Emission Guidelines for Existing Sources and the New Source Performance Standards in the Municipal Solid Waste Landfills Sector § 4, Docket ID EPA-HQ-OAR-2014-0451-0225 (July 2016).

¹⁹ See, e.g., Amanda Reilly, *Greens Drop Suit over Delay in Obama-Era Landfill Rules*, Greenwire (Feb. 1, 2018), <https://www.eenews.net/greenwire/stories/1060072641>; Abby Smith, *EPA Trashes Plan to Pause Landfill Methane Limits*, Bloomberg BNA (Jan. 12, 2018), <https://www.bna.com/epa-trashes-plan-n73014474118/>; Georgina Gustin, *Trump EPA Gives Landfills a Pass on Climate-Warming Methane*, Inside Climate News (May 24, 2017), <https://insideclimatenews.org/news/23052017/methane-rules-trump-epa-obama-clean-power-plan-waste-management-delay>; Timothy Cama, *EPA to Consider Repealing Methane Pollution Standards for Landfills*, The Hill (May 23, 2017), <http://thehill.com/policy/energy-environment/334818-epa-to-consider-repealing-methane-pollution-standards-for-landfills>.

For ease of administration and to conserve resources, we will accept documents produced in a readily accessible electronic format. In the event EDF's request for a fee waiver is denied or if you have any questions about this request, please contact me immediately by telephone at (202) 572-3318 or by email at blevitan@edf.org.

Respectfully submitted,

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